

# **STATE PROPERTIES COMMITTEE MEETING**

**TUESDAY, DECEMBER 20, 2011**

The meeting of the State Properties Committee was called to order at 10:03 a.m. by Chairman Ronald N. Renaud. Attendance of the members was taken by roll call and the following members made their presence known: Robert Griffith representing the Rhode Island Department of Administration; Richard Woolley representing the Rhode Island Department of Attorney General; Lawrence S. Eichler, Public Member; and Andrew Marcaccio representing the Rhode Island Office of the General Treasurer, Ex-Officio Member. Others in attendance were Anthony Robinson from the State of Rhode Island General Assembly; Kelly Carpenter from the Rhode Island Senate Fiscal Office; Paul Carcieri, Susan Howe, Gilbert Bricault and Robert B. Jackson from the Rhode Island Department of Transportation; Lisa Primiano from the Rhode Island Department of Environmental Management; Louis Saccoccio from the University of Rhode Island; Mark Welch from the Rhode Island Office of Secretary of State; Brian Peterson from the Rhode Island Department of Children, Youth and Families; and Robert Azar from the City of Providence.

Chairman Renaud stated for the record that the State Properties Committee did have a quorum present.

A motion was made to approve the minutes of the State Properties Committee meeting held on Tuesday, December 6, 2011, by Mr. Woolley and seconded by Mr. Griffith.

**Passed Unanimously**

**ITEM A – Office of Secretary of State – A request was made for approval of and signatures on a Subordination, Non-Disturbance and Attornment Agreement, by and between, West River Commerce Center, LLC; Bank Rhode Island and The Office of Secretary of State concerning the Lease Agreement for the premises located at 148 West River Street in the City of Providence. Mr. Welch stated that the Office of Secretary of State is seeking approval of and signatures on a Subordination, Non-Disturbance and Attornment Agreement very similar to the one which was approved by the Committee in May of 2011. Mr. Welch explained that the existing Lease Agreement is for a term of ten (10) years, which commenced on November 1, 2005 and will expire on or about October 31, 2015. Mr. Welch indicated that the Landlord, West River Commerce Center, LLC, is attempting to refinance its real estate mortgage through Bank Rhode Island and the bank has requested that the Secretary of State execute a Subordination Agreement. Mr. Welch indicated that the Secretary of State has executed said Agreement and at this time respectfully requests the State Properties Committee's approval of the same. In reviewing the existing Lease Agreement, Mr. Eichler commented that he was unable to locate a subordination clause within said Lease. Mr. Welch indicated that the subordination clause is attached to the Lease Agreement as an exhibit. Mr. Eichler stated that the State's form of lease agreement should contain an automatic subordination clause within the body of the document. Mr. Welch indicated that he would have to review the Lease Agreement, but it is his understanding that there is an executed Exhibit A, which consists of**

pages 28, 29, 30, 31 and 32, of the Lease Agreement which addresses the issue of subordination. Mr. Eichler reiterated that the Lease Agreement should contain a provision that serves as an automatic subordination clause within the actual body of the document. Mr. Eichler noted that paragraph 30 on page 11 states that both the Landlord and Lender shall provide subordination; however, he was unable to locate an automatic subordination clause. Mr. Woolley noted that provision 7 on page 4 states that "No Further Subordination. Except as expressly provided to the contrary in Paragraph 1 hereof..." Mr. Eichler asked if the Secretary of State has required or requested that the Lender execute a separate Subordination Agreement. Mr. Eichler indicated that the subordination agreement attached to the original Lease Agreement was executed by Bank of America, who he assumes was the lender in 2005. However, Mr. Eichler stated that he can not determine whether Bank Rhode Island, either in May of 2011 or currently, has provided the Secretary of State with the mortgagee's non-disturbance. To that end, Mr. Welch stated that the Agreement approved in May of 2011 was counter-signed by the State Properties Committee, the Landlord and the Lender. A copy of that executed Agreement is attached as Exhibit D and was included in the most recent submission package provided to the Committee. Additionally, Mr. Welch stated that Exhibit E attached to the original Lease Agreement states at paragraph 2 on page 28: "Leasee shall have the same remedies against Mortgagee and/or any such purchaser for the breach of an agreement contained in the Lease." Therefore, Mr. Welch's

understanding of said provision is that all parties have agreed to and have provided subordination. Mr. Welch also indicated that the Lender refused to advance the Mortgagee any funding if the Secretary of State refused to execute the first Subordination Agreement and it is his understanding that the same conditions apply to this most recent attempt to refinance. Mr. Welch stated that obviously as a Tenant, the Secretary of State is subordinating to the rights of the mortgage, but explained that the Agreement also protects the Tenant in the event of a foreclosure, which is the purpose of the attornment. Mr. Welch stated that this is a standard Agreement which protects the Tenant's rights as the Secretary of State would simply continue to pay rent to whoever purchased the property at foreclosure. Mr. Eichler clarified that what he is questioning is the absence of an automatic subordination clause within the body of the Lease Agreement and further, whether Bank Rhode Island's execution of the subject Subordination Agreement constitutes their agreement to provide subordination as well. Mr. Eichler stated that it is standard practice to include an automatic subordination clause within the body of a lease agreement and going forward he strongly recommends that any and all lease agreements, to which the State is a party, should contain an automatic subordination clause. Further, Mr. Eichler reiterated his concern regarding whether Bank Rhode Island's execution of this Subordination Agreement constitutes their agreement to provide subordination and that nothing further is required to ensure that they are agreeing to and in fact providing subordination for the State's protection. Mr. Welch stated that

concerning the absence of an automatic subordination within the body of the Lease Agreement, he was not employed by the State at that time, nor was the current Secretary of State in office in 2005, when said Lease Agreement was approved. He also stated that the State of Rhode Island in all likelihood did not draft the original Lease Agreement. However, it is Mr. Welch's legal opinion that an automatic subordination clause would not be beneficial to the State. He explained that if the Landlord and/or the Lender are not compelled to confer with the Tenant before refinancing a real estate mortgage due to the existence of an automatic subordination clause, the Tenant loses the opportunity to review the matter to ensure that the Lender and/or Landlord are doing everything necessary to ensure the Tenant's rights are fully protected. In the absence of an automatic subordination clause, the Secretary of State has the opportunity to inform the State Properties Committee, which of course retains the ability to delay the transaction until such time as all required actions have been satisfactorily effectuated by both the Landlord and/or Tenant to protect the best interest of the State of Rhode Island. Further discussion ensued concerning certain provisions contained in the original Lease Agreement and why Mr. Welch is confident that the execution of the subject Subordination Agreement by the Landlord and the Lender constitutes their expressed agreement to provide subordination. Mr. Woolley concurred that he is confident the documents, as presented, adequately protect the State. A motion to approve was made by Mr. Woolley and seconded by Mr. Griffith.

**Passed Unanimously**

**ITEM B – Board of Governors/University of Rhode Island – A request was made for approval of and signatures on a Memorandum of Understanding, by and between the Department of Environmental Management and the Board of Governors/University of Rhode Island to allow the University to maintain scientific equipment at Misquamicut State Beach in the Town of Westerly. Mr. Saccoccio explained that the subject request is in conjunction with a NOAA funded project, which has been ongoing for at least a decade. The University of Rhode Island’s School of Oceanography has been maintaining scientific equipment at Misquamicut State Beach under previous Memorandums of Understanding (“MOU”) with the Department of Environmental Management (the “DEM”). The existing MOU has expired and the University received a replacement MOU, which has been executed by the parties. Mr. Saccoccio stated that there are no fees associated with the University’s use of the Misquamicut State Beach for the aforementioned purpose. Mr. Saccoccio also indicated that a Certificate of Insurance which indemnifies DEM has been secured, but will need to be revised due to a minor omission. Mr. Saccoccio assured the Committee that the Certificate of Insurance will be corrected and submitted to DEM forthwith. A motion to approve was made by Mr. Woolley subject to the University’s submission of a corrected Certificate of Insurance to the Department of Environmental Management. Said motion was seconded by Mr. Griffith.**

**Passed Unanimously**

**ITEM C – Department of Environmental Management – A request was**

made for approval of and signatures on a Conservation Easement over approximately twenty-nine (29) acres of land located along Main Road in the Town of Tiverton; known as the Helger Property. Ms. Primiano stated that the subject Conservation Easement is between the Department of Environmental Management (the "DEM") and the Town of Tiverton (the "Town"). By way of background, Ms. Primiano explained that DEM is holding said Conservation Easement as an opportunity to work with its sister agency, the Department of Transportation (the "DOT"). DOT awarded a grant to The Nature Conservancy through the Transportation Enhancement Grant Program back in 2002, in order to for the Conservancy to acquire the subject property. Ms. Primiano noted that this program provided funding to land trusts and municipalities to assist them in purchasing property along main roads for purposes of preserving scenic roadways. Ms. Primiano stated that The Nature Conservancy received the grant; however, the DOT prefers that a State agency hold the easement rather than a private non-profit organization. Therefore, DEM was invited to be a partner in this project for purposes of holding the subject easement. The Federal Highway Administration is the funding source for this project through DOT; DEM will simply hold the easement on this tract of land. Ms. Primiano presented a photograph of the subject property and noted that there is a series of protect lands in this area which, DEM, the Tiverton Land Trust and The Nature Conservancy have been working together for over fifteen (15) years to preserve. Ms. Primiano indicated that approximately 2,000 acres of land is now protected due to their ongoing efforts. Mr.

**Griffith asked how the property will be managed. Ms. Primiano explained that as the land is owned by the Town, it will be managed by the Town for passive recreation. Ms. Primiano indicated that there are some existing trail systems; however, they are not used extensively by the public at this time. A motion was made to approve by Mr. Griffith and seconded by Mr. Woolley.**

**Passed Unanimously**

**ITEM D – Department of Transportation – A request was made for approval of and signatures on a Temporary Use Agreement, by and between the Department of Transportation and Raymond L. Plante. Mr. Bricault explained that the subject Temporary Use Agreement allows the State to access privately-owned property in order to make necessary drainage improvements along Abbotts Crossing Road. Mr. Bricault stated that the property owner has executed said Agreement. There is no monetary compensation associated with said Agreement as the project is of mutual benefit to both the property owner and the State of Rhode Island. A motion to approve was made by Mr. Griffith and seconded by Mr. Woolley.**

**Passed Unanimously**

**ITEM E – Department of Transportation – A request was made for approval of and signatures on a Temporary Use Agreement, by and between the Department of Transportation and the First Free Will Baptist Church of Smithfield as part of the Improvements to Putnam Pike (Route 44) Project underway in the town of Smithfield. Ms. Howe stated that likewise, this Temporary Use Agreement will allow the State to gain access over privately owned land for purposes of**



widening Church Street due to safety issues. There is no monetary compensation associated with said Agreement as the project is of mutual benefit to both the property owner and the State of Rhode Island. A motion to approve was made by Mr. Woolley and seconded by Mr. Griffith.

**Passed Unanimously**

**ITEM F – Department of Transportation – A request was made for approval of and signatures on a gratis License Agreement, by and between the Department of Transportation and the Department of Children, Youth and Families for use of 7,000 square feet of State-owned land located on Chestnut Street @ Service Road No. 12 in the City of Providence for employee parking, beautification and signage for a term of one (1) year. Mr. Jackson presented a site map of the subject property. Mr. Griffith asked why the License Agreement is for a term of only one year. Mr. Jackson explained that the subject property will soon fall under the jurisdiction of the I-195 District Commission in accordance with the I-195 Redevelopment Act of 2011. Mr. Woolley asked if the subject property has been transferred to the I-195 District Commission as of yet. Mr. Carcieri explained that the transfer of the property to the Commission is ongoing; however, has not been consummated as of yet. Mr. Carcieri indicated that said property is part of the Commission's land and will be transferred to the Commission at some point in the future. Mr. Carcieri reiterated that the term of the License Agreement is for a period of one year and is revocable at will in the event the land is transferred to the Commission prior to the expiration of said**

Agreement. The License Agreement could also pass to the Commission if it so chose. Mr. Carcieri noted that there are a variety of available options concerning the subject property. The property is under DOT custody and control at the present time, but he believes its transfer to the Commission will be effected within the year. Mr. Woolley asked if any of the land in this area has been transferred to the Commission. Mr. Carcieri noted that none of the land has been transferred yet; however, approximately thirty-eight (38) acres of land, of which the subject property is a part, will be transferred to the Commission in the future. Mr. Woolley asked if the land will be transferred all at once or if it will be done in a piece meal manner. Mr. Carcieri stated that the manner in which the land should be transferred is presently under discussion, but there has been no determination made as to whether the land will be transferred by sections or in its entirety. Chairman Renaud asked what will become of the employees who utilize this site for vehicle parking once the License Agreement is revoked or expires and the land is transferred to the Commission. Mr. Peterson explained that DCYF and its employees are well aware that this site will only be available for their use for one year at the most. However, subject to approval, this License Agreement represents the potential for one (1) year of convenient parking for agency investigators and social workers who were displaced when the triangle parking site was demolished as part of the I-195 Relocation Project. Mr. Peterson stated that DCYF is very grateful that DOT has agreed to allow its employees to utilize the site even on a short-term basis. Mr. Carcieri commented that the tone of

the letter received by DOT from Director DeFrances of DCYF was that there was a real need for convenient, safe parking for employees that are in the field and must return to and leave the facility myriad times throughout the business day. Mr. Carcieri noted that DOT would usually prefer not to grant any interest in any property which is designated for transfer to the Commission as it is will not continue to be controlled by DOT for much longer; however, again Director DeFrances' letter indicated that although said arrangement would only be on a temporary basis, it would be very helpful to the agency nonetheless. Therefore, DOT has agreed to enter into a gratis License Agreement with DCYF for a term of one year with the understanding that said Agreement can be revoked at anytime and DCFY employees will be directed to cease and desist from utilizing the subject property forthwith unless the Commission agrees to grant them permission to continue to license and utilize the property. A motion to approve was made by Mr. Woolley and seconded by Mr. Griffith.

**Passed Unanimously**

There being no further business to come before the State Properties Committee, the meeting was adjourned at 10:46 a.m. The motion to adjourn was made by Mr. Griffith and seconded by Mr. Woolley.

**Passed Unanimously**

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**Holly H. Rhodes, Executive Secretary**